

6453
RECORDATION NO. _____ Filed & Recorded

JAN 10 1972 - 1 30 PM

EXECUTED COUNTERPART NO. 4

INTERSTATE COMMERCE COMMISSION

C O N D I T I O N A L S A L E A G R E E M E N T

DATED AS OF DECEMBER 31, 1971

BETWEEN

THRALL CAR MANUFACTURING COMPANY

AND

SOO LINE RAILROAD COMPANY

FOR PURCHASE OF

SEVENTY (70) 100-TON HIGHSIDE GONDOLA CARS WITH STEEL
BULKHEADS

EQUIPPED WITH ROLLER BEARINGS

A G R E E M E N T A N D A S S I G N M E N T

DATED AS OF DECEMBER 31, 1971

BETWEEN

THRALL CAR MANUFACTURING COMPANY

AND

FIRST NATIONAL BANK OF MINNEAPOLIS

THIS AGREEMENT dated as of December 31, 1971, by and between THRALL CAR MANUFACTURING COMPANY a corporation organized and existing under the laws of the State of Delaware, with a place of business in the City of Chicago Heights, Illinois (hereinafter sometimes called the "Seller"), as party of the first part; and SOO LINE RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business in the City of Minneapolis, Minnesota (hereinafter sometimes called the "Buyer"), as party of the second part;

WITNESSETH THAT:

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

(1) Construction, Sale and Delivery. The Seller hereby agrees to construct, sell and deliver to the Buyer and the Buyer hereby agrees to buy from the Seller and to accept delivery as hereinafter provided and to pay therefor as hereinafter sometimes referred to as "Equipment" or "car" or "cars"):

Seventy (70) 61' 0" 100-ton, highside gondola cars with permanent steel bulkheads and roller bearings, to be manufactured in accordance with the Agreement dated as of September 22, 1971, between Soo Line Railroad Company and Thrall Car Manufacturing Company, and bearing Buyer's road numbers 63101 to 63239, both inclusive, odd numbers only.

The basic purchase price for each of said cars shall be Sixteen Thousand and Five Dollars (\$16,005), including net freight charges of \$36.00 per car.

The basic aggregate purchase price for the above equipment shall be One Million One Hundred Twenty Thousand Three Hundred Fifty and No/100 Dollars (\$1,120,350), all as set forth in Purchase Agreement dated September 22, 1971, including net freight charges.

The Seller will give the Buyer full opportunity to inspect said cars during the construction thereof at its Chicago Heights, Illinois plant. The Seller shall deliver said cars, freight charges prepaid, to the Buyer from time to time, and whenever any of said cars are completed and ready for shipment, at Schiller Park, Illinois, or other location on Buyer's line specified by the Buyer. The Buyer agrees to assume the expense, responsibility and risk of loss in and of the removal of the said cars from the Seller's said plant to the said place of delivery to the Buyer.

After receipt and inspection of each car or group of cars by the Buyer or its agents at Schiller Park, Illinois, or other location on Buyer's line specified by the Buyer, the Buyer's Chief Mechanical Officer, or his duly authorized representative, shall, if said car or group of cars meets said specifications, execute in quadruplicate a Certificate of Acceptance. The execution of such Certificate of Acceptance shall be conclusive evidence that the car or group of cars covered thereby conforms with specifications and is acceptable to the Buyer in all details, but shall not waive any of the Buyer's rights under Section (1) or (10) of this agreement.

The Seller shall deliver the cars as aforesaid on or before March 31, 1972, provided, however, that the Seller's obligation as to time of shipment is subject to delays due to accident, fire, flood, explosion, labor troubles, Acts of the Government, including embargoes, priorities and allocations, war and war conditions, delays of carriers, delays or defaults of subcontractors, or delays in receipt of materials, or to any other cause or causes (whether or not of the same kind as herein specifically enumerated) beyond the Seller's reasonable control.

If all of the cars are not delivered and accepted prior to March 31, 1972, by reason of any of the causes set forth in the next preceding paragraph, the provisions of this agreement may be declared inoperative, without any penalty whatsoever as to such undelivered cars, by either the Seller or the Buyer, by written notice given by either to the other (and to Thrall Car Manufacturing Company, after the assignment of all or any of its rights hereunder); and in such event (a) the Seller and the Buyer shall execute an agreement supplemental hereto limiting this Agreement to the cars delivered and accepted before this Agreement shall have been declared inoperative and (b) Thrall Car Manufacturing Company and the Buyer shall execute a separate agreement covering the sale to the Buyer of such undelivered cars and providing for the payment for such cars so excluded upon delivery thereof (which shall be as soon as practicable after this Agreement shall have been declared inoperative) in cash either directly, or, in the case the Buyer shall arrange therefor, by means of a conditional sale agreement, equipment trust, or such other appropriate method of financing as the Buyer shall determine.

(2) Amount and Payment of Purchase Price. Conditional only upon the receipt and acceptance of each car, which may be conclusively presumed from the execution of the Certificate of Acceptance above referred to, and upon receipt of Seller's invoice for such car stating the final purchase price therefor, the Buyer shall pay to the Seller the amounts specified in subparagraph (a) of this Section (2), and to the Seller or the assignee thereof the amounts specified in subparagraph (b) of this Section (2), at such place as may be designated by the Seller, or its assignee:

(a) As a down payment for each car, a sum equal to the difference between the final purchase price per car and the deferred purchase price per car.

(b) Commencing on the first day of April, 1972, and continuing for a total of forty (40) consecutive quarterly installment payments payable on the first day of each quarterly installment period.

(i) Three Hundred Ninety-Seven Dollars (\$397), as payment of the balance of the basic purchase price per car, sometimes hereinafter called the "deferred purchase price"; and

(ii) Interest at the rate of one percent (1%) per annum in excess of the prime commercial rate for 90-day unsecured loans to borrowers of the highest credit rating charged by Morgan Guaranty Trust Company, City and State of New York, on the first day of each January, April, July and October commencing January 1, 1972, said rate to remain effective for each quarterly installment payment period upon the unpaid balance of the basic purchase price of each car from the date of acceptance.

All payments provided for in this Agreement shall be made by the Buyer at such place as may be designated by the Seller or its assignee, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

The Buyer shall have the privilege of prepaying at any time and from time to time, without the payment of any premium, any or all of the aforesaid quarterly installment payments, in their inverse order, together with the interest at the said rate which is accrued and unpaid at the date such payment is prepaid, and interest on such amount so prepaid shall thereupon cease to accrue.

(3) Title to the Equipment. The Seller shall, and hereby does retain the full legal title to and property in any and all of said Equipment until the Buyer shall have made all of the payments, and shall have kept and performed all of the covenants, in this Agreement provided to be made, kept or performed by the Buyer, notwithstanding the delivery of the Equipment to, and the possession and use thereof by, the Buyer as herein provided.

The Buyer covenants and agrees that it will cause each unit of the Equipment to be kept numbered with the proper road number and to be kept plainly marked, by stencil markings or metal plates upon both sides of each unit of the Equipment covered by this Agreement, with the name of the Seller or of the Seller's assignee, as the case may be, followed by the word "Owner" or "Owner-Assignee" or other appropriate words designated by the Seller, in letters not less than one inch in height, and the Buyer agrees that it will not accept delivery of or place said Equipment in operation or exercise any control or dominion over any part thereof until said stencil markings, or said metal plates so marked, have been affixed to both sides of each unit of said Equipment.

The Buyer shall replace the Equipment or any of it, or any parts thereof, at its own cost if the Equipment or any of it, or any parts thereof, shall be lost or destroyed from any cause whatever during the continuance of this Agreement with other Equipment suitable for the carriage of freight by railroad of substantially as good material and construction as that lost or destroyed. The Buyer, however, shall have the right, instead of replacing any such lost or destroyed Equipment, to pay to the Seller the then unpaid balance properly assignable to such Equipment which shall be applied on the last installment or installments payable hereunder. The Buyer will cause any such new Equipment to be marked as above provided and suitably numbered with respect to the Equipment so replaced. Any and all such replacements of Equipment or any of it, or any parts thereof, shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement, as though part of the original Equipment delivered hereunder and included in the word "Equipment" or "car" or "cars" as used in this Agreement. The title to all such new Equipment shall be taken initially, and shall remain, in the name of the Seller (or, if this Agreement shall have been assigned, in the name or names of the assignee or assignees, as the case may be), subject to the provisions hereof.

Except as above provided, the Buyer will not allow the name of any person, association or corporation to be placed on the Equipment, or any replacements thereof, as a designation that might be interpreted as a claim of ownership thereof; provided, however, that the Buyer may cause the Equipment to be lettered "Soo Line" and to bear the symbol of the Soo Line Railroad Company

When and only when the Seller has been paid the full purchase price for all Equipment, together with interest and any and all other payments as herein provided, and all of the Buyer's covenants and conditions herein contained have been performed by the Buyer, title to and property in all of the Equipment shall pass to and vest in the Buyer without further transfer or act on the part of the Seller, except that the Seller shall, if requested by the Buyer so to do, execute and deliver to the Buyer a bill or bills of sale of all of said Equipment, transferring the title to and property in said Equipment to the Buyer free and clear of all liens and encumbrances created or retained hereby, and shall execute for record or for filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to all of said Equipment, and thereupon the Buyer shall remove the stencil markings or ownership plates from each unit of the Equipment; provided, however, that if the Seller shall have assigned its interest in and to said Equipment and its rights hereunder pursuant to Section (11) hereof, such assignee of the Seller shall execute and deliver to the Buyer a bill of sale conveying said Equipment to the Buyer and warranting the same, but only against the acts and deeds of such assignee.

(4) Taxes. All payments to be made by the Buyer hereunder shall be free of expenses to the Seller for collection or other charges, and of the amount of any local, state or federal taxes (other than net income taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement and/or the manufacture of the Equipment covered hereby and/or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, licenses and taxes the Buyer assumes and agrees to pay, or to reimburse the Seller if the Seller shall be required to pay any of the foregoing expenses, licenses or taxes, in addition to the above mentioned purchase price of said Equipment. The Buyer shall also pay promptly all taxes and assessments which may be imposed upon the Equipment or the earnings arising therefrom or the use or operation thereof, or upon the Seller by reason of its ownership thereof, by any jurisdiction in which the Equipment is operated by the Buyer, and agrees to keep at all times all and every part of the Equipment free and clear of all taxes, assessments, liens and

encumbrances, except that the Buyer may, in good faith, appropriately contest any tax or assessment levied upon the Equipment.

(5) Compliance with Laws, Rules and Regulations. The Buyer covenants that the Equipment will at all times be maintained, used and operated under and in compliance with all laws and regulations in any jurisdiction to which the Equipment may be subject. The Buyer further covenants that it will comply in all respect with all acts of Congress and with the laws of the United States and of the States and Territories into which its operations involving the Equipment may extend during the term of this Agreement, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any of the Equipment, and in the event that said laws or rules require the alteration of any of the Equipment, the Buyer agrees to conform therewith, at its expense, and to maintain the same in proper condition for operation under such laws and rules during the life of this Agreement; provided, however, that the Buyer may in good faith contest, in any reasonable manner, the application of any such law or rule which does not, in the judgment of the Seller, affect the Seller's title in and to the Equipment.

(6) Maintenance. The Buyer covenants and agrees that it will at all times after the delivery of said equipment, maintain and keep said Equipment in good order and repair at its expense.

(7) Reports and Inspection. The Buyer hereby agrees to furnish to the Seller, if requested, once in each year as long as this Agreement shall be in force, an accurate inventory of the Equipment in actual service, the numbers and the description of such Equipment as may have been destroyed, and replaced by other Equipment, and the then location of said Equipment. In addition thereto, the Buyer agrees to furnish to the Seller, if requested, once in each year as long as this Agreement shall remain in force, a report of inspection by the Buyer's Chief Mechanical Officer, or, if the Seller shall so request, by a competent disinterested party satisfactory to the Seller, certifying that said Equipment has been maintained, and is, in good order and repair.

The Buyer shall promptly and fully inform the Seller of any loss or destruction of any of the Equipment and of any substantial repairs

made or being made upon it or any of it. If requested by the Seller, the Buyer shall furnish to the Seller a report of the Buyer's Chief Mechanical Officer, or, if the Seller shall so request, of a competent disinterested party satisfactory to the Seller, covering the nature and extent of any damage to the Equipment and the satisfactory repair thereof.

The Seller shall have the right, but shall be under no obligation, to inspect the Equipment at any reasonable time or times during the continuance of this Agreement. The Buyer agrees, in so far as it may legally do so, to supply free transportation over its lines to designated agents of the Seller for the purpose of enabling such agents to reach the point or points where the Equipment is in operation, for the purpose of making such inspection or of assisting and instructing the employees of the Buyer in the proper operation and maintenance of the Equipment.

(8) Use and Location. The Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by or controlling the Buyer, or over which it has trackage rights, and the Equipment may be used also upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Seller to the Buyer, but only upon and subject to all the terms and conditions of this Agreement.

(9) Prohibition against Liens. The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party by, through or under the Buyer and its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment or any of it, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the Equipment.

(10) Indemnities and Guaranties. (a) "The Seller warrants and guarantees that for a period of one year after acceptance of delivery of the last car to the lines of Buyer that the same was built in accordance with the specifications and that the cars will be free from defects in material and workmanship under normal use and service.

"In the event there is a breach of said warranty and the same is reported to the Seller by registered mail or telegram, the latter will make all necessary alterations, modifications, replacements or repairs required to fulfill its obligation thereunder either at the Buyer's shops or at the manufacturer's plant (with transportation charges from and to the Buyer to be paid by manufacturer). The Buyer shall not make any alterations, modifications, replacements or repairs and be entitled to reimbursement if it proceeds to do so without giving manufacturer adequate opportunity to inspect the car or cars involved. Approval of drawings and acceptance of cars by the Buyer shall not constitute a waiver of the Seller's obligations under the foregoing warranties and guaranties. "

(b) The warranties referred to in section (10)(a) above shall not apply to specialties incorporated in said cars which were specified by the Buyer and not manufactured by the Seller, or to designs specified by the Buyer and not developed or purported to be developed by the Seller. The Seller shall not be liable for indirect or consequential damages resulting from defects in material, design, construction or workmanship. The warranties set forth in said section (10)(a) as modified above are expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, or liability for loss of use of the cars if they are removed from service for alterations, modifications, replacements or repairs and of all other obligations or liabilities on the part of the Seller, except as are set forth in this agreement and the Agreement dated as of September 22, 1971, between Soo Line Railroad Company and Thrall Car Manufacturing Company referred to in section (1) of this agreement, and the Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of subject cars. Except in cases of articles or materials specified by the Buyer and not manufactured by the Seller and in cases of designs, systems, processes, formulae or combinations specified by the Buyer and not developed or purported to be developed by the Seller, the Seller agrees to indemnify, protect and hold harmless the Buyer from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel

fees, in any manner imposed upon or accruing against the Buyer, its assigns or the users of subject cars because of the use in or about the construction or operation of any of subject cars of any design, system, process, formula, combination, article of material which infringes or is claimed to infringe on any patent or other right, the Buyer likewise will indemnify, protect and hold harmless the Seller from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Seller because of the use in or about the construction or operation of the equipment of any article or material specified by the Buyer and not manufactured by the Seller or of any design, system, process, formula or combination specified by the Buyer and not developed or purported to be developed by the Seller which infringes or is claimed to infringe on any patent or other right. The Seller agrees to and hereby does, to the extent legally possible, without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Buyer every claim, right and cause of action which the Seller has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Buyer and purchased or otherwise acquired by the Seller for use in or about the construction or operation of any of subject cars, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe upon any patent or other right. The Seller further agrees to execute and deliver to the Buyer or the users of the equipment all and every such further assurance as may be reasonably requested by the Buyer more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Seller will give notice to the Buyer of any claim known to the Seller from which liability may be charged against the Buyer hereunder and the Buyer will give notice to the Seller of any claim known to the Buyer from which liability may be charged against the Seller hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, satisfaction and discharge of this Agreement or the termination of this agreement in any manner.

(c) The Buyer hereby agrees to save, indemnify and keep harmless the Seller from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Equipment or the use or operation thereof. Said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the Equipment as provided in Section (3) hereof.

(d) The Buyer will bear the risk, and shall not be released from its obligations hereunder, in the event of any damage to, or the destruction or loss of, any or all of the Equipment; provided, however, that the Seller and any successor or successors to its manufacturing property and business shall not, as to any of the Equipment, be relieved from its guaranty covering material and workmanship above set forth or in the specifications hereinbefore referred to. Seller for itself and any successor or successors to its manufacturing property and business also agrees to save, indemnify and keep harmless the Buyer from and against any and all royalties, damages, claims, suits, judgments and costs that may arise in the use of any patented article on the Equipment at the time of delivery, except with regard to any appliances, design or materials specified, supplied or required by the Buyer and not manufactured by the Seller. As to such excepted appliances, design or materials, the Buyer shall in like manner indemnify and save harmless the Seller and each assignee hereof. Prompt notice in writing shall be given by each party to the other of any claims of patent infringement presented to such party and the party responsible for such infringement, as above provided, shall promptly undertake and assume the defense thereof.

(11) Assignments by the Seller. All or any of the rights of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Buyer, may be assigned by the Seller and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall subject any assignee to, or relieve the Seller or the successor or successors to its manufacturing property and business from, any of the obligations of the Seller to construct and deliver the Equipment herein to be delivered in accordance with the specifications, or to respond to its guaranties, warranties and indemnities contained in Sections (1) and (10) hereof.

Upon any such assignment the assignor shall give written notice to the Buyer, together with a counterpart or conformed copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Seller's right, title and interest in and to the Equipment and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Buyer of the notification of any such assignment, all payments thereafter to be made by the Buyer hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any such assignment prior to the delivery of the Equipment, the Buyer shall deliver to such assignee, prior to the delivery of said Equipment, an opinion of counsel for the Buyer, in form acceptable to such assignee and its counsel, to the effect that this Agreement is valid and effective, that the terms, conditions and agreements therein contained on the part of the Buyer to be observed or performed are valid, effective and binding upon the Buyer, its successors and assigns, that the execution of this Agreement on behalf of the Buyer has been duly authorized, a statement that no approval of any governmental agency is necessary, and that this Agreement and the said assignment thereof have been filed, recorded or filed for record, prior to the delivery of any of the Equipment, as specified in Section (16) of this Agreement.

In the event that this Agreement is assigned by the Seller as hereinbefore provided, the rights of such assignee to the entire unpaid purchase price, or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Seller or the successor or successors to its manufacturing property and business in respect of the Equipment or the manufacture, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer by the Seller or the successor or successors to its manufacturing property and business. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Buyer against and only against the Seller and the successor or successors to its manufacturing property and business, and shall not be enforceable against any party or parties in whom title to the Equipment or any of it, or the rights of the Seller hereunder, shall vest by reason of any sale, assignment or transfer, or successive sales, assignments or transfers

In the event of any such sale, transfer or assignment, or successive sales, transfers or assignments by the Seller, or title to any of the Equipment and of the Seller's rights hereunder in respect thereof, the Buyer shall, whenever requested by such vendee, transferee or assignee, change the stenciling or other marking on both sides of each unit of the Equipment so as to indicate the title of such vendee, transferee or assignee to such equipment and its succession to the rights of the Seller hereunder, such markings to bear such words or legend as shall be specified by said vendee, transferee or assignee.

In the event that this Agreement is assigned by the Seller as hereinabove provided, the assignee under its assignment shall, in addition to and without in any manner impairing or limiting its rights, titles, and interests thereunder and hereunder, be free of expenses for collection or other charges and of the amount of any state or federal taxes (other than state and federal income taxes) levied or imposed directly upon this Agreement and/or the manufacture of the Equipment covered hereby and/or any sale, payment, shipment, delivery or use under the terms of this Agreement, all of which expenses and taxes shall be assumed and paid by the Buyer as provided in Section (4) hereof.

Subject to the provisions of the first paragraph of this Section (11), the term "Seller" whenever used in this Agreement means, before any assignment of all or any rights of the Seller hereunder, and hereinbefore provided in this Section (11), Thrall Car Manufacturing Company, and after any such assignment, the assignee or assignees for the time being of any or all of such rights.

(12) Assignments by the Buyer. The Buyer covenants and agrees that it will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, nor transfer possession of said Equipment to any other firm, person or corporation without first obtaining the written consent of the Seller to such sale, assignment or transfer. A transfer to a trustee or trustees, or to a receiver or receivers, or to a railroad company acquiring not less than seventy-five percent (75%) of the Buyer's lines of railroad and who or which shall assume and agree to perform all of the obligations and covenants of the Buyer hereunder shall not be deemed a breach of this covenant.

The Buyer hereby covenants and agrees that it will not pledge, hypothecate, or in any way encumber, or permit the encumbrance of, any part or all of said Equipment.

(13) Defaults and Remedies. The occurrence of any one or more of the following events of default which shall occur and be continuing shall entitle the Seller to take action as hereinafter in this Section (13) provided:

(a) The Buyer shall fail to pay in full any sum payable by the Buyer as herein provided within 30 days after payment thereof shall be due hereunder; or

(b) The Buyer shall, for more than 30 days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Seller for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Buyer, and all the obligations of the Buyer under this Agreement shall not have been duly assumed by a trustee or trustees appointed in such proceedings or otherwise given the same status as obligations assumed by such trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Buyer for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and all the obligations of the Buyer under this Agreement shall not have been duly assumed by a trustee or trustees or receiver or receivers appointed for the Buyer or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been com-

menced, whatever shall be earlier; or

(e) The Buyer shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment.

Upon the occurrence of any such event of default by or on the part of the Buyer, the Seller shall have the right at its option to declare each and all of said installment payments and all other sums of money payable hereunder to be forthwith due and payable, and the Seller may take immediate possession of said cars, including any equipment or parts substituted or added or attached thereto, without demand or further notice and without process, and for this purpose Seller shall have the right to enter upon the premises wherever said cars may be found and remove said cars, and to employ any available trackage and similar facilities or means of removing same, or to cause the Buyer to assist in removing same by its delivery thereof to such place or places on its railroad as Seller may reasonably designate for said purpose.

In event said cars are retaken hereunder, the Seller shall be entitled to retain or collect any and all payments theretofore made or payable hereunder by the Buyer, and the Seller may sell said cars at public or private sale, with or without having said cars at the place of sale, and upon such reasonable terms and in such manner as the Seller may determine; the Seller may bid at such public sale; or the Seller may at its option lease the cars upon such terms as it may determine. From the proceeds of any such sale or such leasing the Seller shall deduct all expense for retaking, repairing and selling or leasing said cars. The balance thereof shall be applied to the total principal amount and interest thereon due hereunder; any surplus shall be paid over to the Buyer, and in case of a deficiency, the Buyer shall pay the same with interest.

The Seller may at its election (and, if before sale or leasing or before full performance of this Agreement all costs and expenses of the Seller incidental to any such default and to the enforcement by the Seller of the provisions hereof, and all sums which shall then have become due and payable by the Buyer hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this Section as aforesaid, shall have been paid

by the Buyer, and all other existing defaults shall have been remedied, or provision therefor satisfactory to the Seller shall have been made, then and in every such case the Seller shall) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration or termination had been made; but no such waiver, rescission or annulment shall limit or affect the Seller's right, upon any other default, or impair any rights or remedies consequent thereon.

Each and every power or remedy hereby specifically given to the Seller shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default, or an acquiescence therein.

(14) Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into an instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived they are hereby waived by the Buyer to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

(15) Extension Not a Waiver. Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor any of its rights and remedies hereunder or otherwise existing.

(16) Recording. The Buyer will cause this Agreement, any assignments hereof and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited pursuant to the provisions of Section 148 of the Railway Act of Canada, and the Buyer will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Buyer will promptly furnish to the Seller certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Buyer with respect thereto, satisfactory to the Seller.

(17) Payment of Expenses. The Buyer shall pay all costs, charges and expenses, except the counsel fees of the Seller, incident to the preparation, printing, execution, acknowledgment, filing, registering and recording of this Agreement and of the first assignment or assignments by the Seller of title to the Equipment, and of any instrument supplemental hereto or amendatory hereof.

(18) Execution of Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

(19) Section Headings. All section, paragraph or division headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(20) Modification of Agreement. This Agreement of conditional sale, together with the specifications hereinabove referred to, constitute the entire Agreement between the Buyer and the Seller with respect to the sale of the Equipment herein referred to. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by duly authorized officers of the Buyer and the Seller.

(21) Law Governing. As the Equipment covered by this Agreement is intended for use in connection with interstate commerce and may be used in various states which may have conflicting laws as to the rights and obligations of the parties hereunder, it is agreed that, irrespective of the place of execution of this Agreement or of the place of delivery and use of the Equipment, all rights and obligations of the parties hereto to each other under the terms of this Agreement shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, Thrall Car Manufacturing Company has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions, and Soo Line Railroad Company has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful resolutions, all as of the day, month and year first above written.

THRALL CAR MANUFACTURING COMPANY

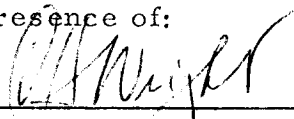
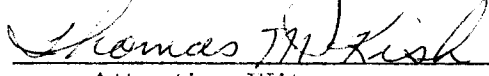
By 
President

ATTEST:

(CORPORATE SEAL)


Secretary

Signed, sealed and delivered by
Thrall Car Manufacturing Company
in the presence of:



Attesting Witnesses

SOO LINE RAILROAD COMPANY

By Leonard H. Murray
President

ATTEST:

Alonzo Beckley
Secretary

(CORPORATE SEAL)

Signed, sealed and delivered by
Soo Line Railroad Company in the
presence of:

J. D. Brown
Robert H. Gilling
Attesting Witnesses

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

On this 5th day of January, 1972, before me personally appeared R. S. Dukasovis, to me personally known, who, being by me duly sworn, says that he is _____, President of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Anna L. Fry
Notary Public

(NOTARIAL SEAL)

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

On this 7th day of JANUARY, 1972, before me personally appeared Leonard H. Murray, to me personally known, who, being by me duly sworn, says that he is _____, President of SOO LINE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edwin G. Watts

EDWIN G. WATTS
Notary Public, Hennepin County, Minn.
My Commission Expires Oct. 10, 1973.

(NOTARIAL SEAL)

A G R E E M E N T A N D A S S I G N M E N T

DATED AS OF DECEMBER 31, 1971

BETWEEN

THRALL CAR MANUFACTURING
COMPANY

AND

FIRST NATIONAL BANK OF MINNEAPOLIS

THIS AGREEMENT AND ASSIGNMENT, dated as of December 31, 1971, by and between THRALL CAR MANUFACTURING COMPANY, a corporation organized and existing under the laws of the State of Delaware, with a place of business in the City of Chicago Heights, Illinois (hereinafter sometimes referred to as the "Seller"), as party of the first part; and First National Bank of Minneapolis, a national banking association duly incorporated and existing under the laws of the United States of America, with its principal place of business in the City of Minneapolis, Minnesota (hereinafter sometimes referred to as the "Assignee"), as party of the second part;

WITNESSETH THAT:

WHEREAS, the Seller and Soo Line Railroad Company (hereinafter sometimes referred to as the "Buyer") have entered into a Conditional Sale Agreement, dated as of December 31, 1971 (hereinafter sometimes referred to as the "Agreement"), covering the construction and sale by the Seller, and the purchase by the Buyer, on the conditions set forth in said Agreement, of Seventy (70) 100-ton highside gondola cars with permanent steel bulkheads and roller bearings, bearing the Buyer's Road Numbers 63101 to 63239, both inclusive, odd numbers only (hereinafter sometimes referred to as the "Equipment"), all as more particularly described in said Agreement, at a price payable with interest, as provided therein; and

WHEREAS, the Assignee has agreed to purchase the rights of the Seller under said Agreement, in and to the said Equipment and the payments therefor, as provided in said Agreement, and the Seller has agreed to assign the same to the Assignee;

NOW, THEREFORE, for value received, and in consideration of the acceptance of this Agreement and Assignment by said Assignee, upon the terms and conditions hereinafter set forth, it is agreed:

(1) The Seller does hereby sell, assign, transfer and set over unto the Assignee, all the right, title and interest of the Seller under said Conditional Sale Agreement (except the right to receive all payments in respect of the Equipment in excess of the deferred purchase price and interest thereon specified in Section (2) of the Conditional

Sale Agreement) together with all the Seller's powers, privileges, immunities and remedies thereunder, and all the right, title and interest of the Seller in and to the Equipment when and as the same is delivered and accepted by the Buyer, and upon payment by the Assignee to the Seller of the amount set forth in Section (5) hereof, and in and to any and all amounts which may be or become due and owing by the Buyer to the Seller under the Conditional Sale Agreement on account of the deferred purchase price of the Equipment and interest thereon, and in and to any other sums becoming due under the Conditional Sale Agreement, without any recourse, however, to the Seller for or on account of any failure of payment or compliance with any of the terms or provisions of said Conditional Sale Agreement on the part of the Buyer; provided however, that this Assignment shall not subject the Assignee to, or relieve the Seller, or any successor or successors to its manufacturing property and business, from complying with the obligations of the Seller to construct and deliver the Equipment, as in the Agreement provided, or complying with the provisions of Sections (1) and (10) of said Agreement, or relieve the Buyer from its obligations to the Seller under Sections (1), (2)(a), (4) and (10) of said Agreement; it being understood and agreed, however, that, notwithstanding this Assignment, or any subsequent assignment pursuant to Section (8) hereof, all said obligations of the Seller to the Buyer, in respect of the Equipment, shall be and remain enforceable by the Buyer, its successors and assigns, against and only against, the Seller and any successor or successors to its manufacturing property and business.

In furtherance of this Assignment and transfer, the Seller hereby authorizes and empowers the Assignee, in such manner and at such times as the Assignee may deem advisable, in the Assignee's own name, or in the name of the Assignee's nominee, to ask, demand, sue for, collect, receive and enforce, any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Buyer with the terms and agreements on the part of the Buyer to be performed under the Conditional Sale Agreement, but without expense and liability to the Seller and for the sole benefit of the Assignee.

(2) The Seller agrees to indemnify and save harmless the Assignee, against any and all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result

of such actions, arising in any way out of any alleged infringement of patents covering the Equipment or any part or appliance thereof, excepting those patents covering devices and specialties designated by the Buyer to be used in the building of such Equipment.

(3) The Seller covenants and agrees that it will construct the Equipment in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all claims, liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; and that notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Seller.

(4) The Seller covenants and agrees with the Assignee that, upon request of the Assignee, the Seller will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Seller therein or in the Equipment therein described.

(5) The Assignee covenants and agrees that upon the deliver to and acceptance by the Buyer pursuant to the Conditional Sale Agreement of the Equipment, but not later than March 31, 1972, or such later date on which the provisions of said Conditional Sale Agreement and this Agreement and Assignment are declared inoperative by the Buyer or the Assignee (provided it shall previously have received an opinion of counsel for the Buyer in form acceptable to it and its counsel as specified in Section (11) of the Conditional Sale Agreement, and an opinion of counsel for the Seller, in form acceptable to the Assignee and its counsel, to the effect that the Conditional Sale Agreement and this Agreement and Assignment have each been duly authorized, executed and delivered by the Seller, are each valid and binding upon the Seller in accordance with the respective terms thereof, and that title to the Equipment shall vest in the Assignee in accordance with the terms of this Agreement), it will, as and when such Equipment is delivered to and accepted by the Buyer as provided in the Conditional Sale Agreement make payment to the Seller of the deferred purchase price of such Equipment, amounting to Fifteen Thousand Eight Hundred and Eighty Dollars (\$15,880) for each unit of Equipment, with interest at

the rate of one percent (1%) per annum in excess of the prime commercial rate for 90-day unsecured loans to borrowers of the highest credit rating charged by Morgan Guaranty Trust Company, City and State of New York, on the first day of each January, April, July and October commencing January 1, 1972, said rate to remain effective for each quarterly installment payment period on the aforesaid balance of the purchase price, from the date of acceptance of each unit of Equipment to the date of payment by the Assignee, upon receipt by the Assignee of the following documents:

(a) a bill of sale from the Seller to the Assignee, confirming in the Assignee title to the Equipment so delivered, subject, however, to the rights of the Buyer under the Conditional Sale Agreement;

(b) a certificate or certificates of acceptance signed by an authorized representative of the Buyer stating that the Equipment covered by such certificate or certificates has been delivered to and accepted by him on behalf of the Buyer as conforming in all respects to the requirements and the provisions of the Conditional Sale Agreement;

(c) a duplicate of the Seller's invoice covering such Equipment so accepted, stating as to such Equipment the final purchase price and the deferred purchase price thereof, and acknowledging receipt of that part of the final purchase price in excess of the deferred purchase price.

(6) The Seller hereby

(a) represents and warrants to the Assignee, that the Conditional Sale Agreement was lawfully executed by it for a valid consideration, and that said Conditional Sale Agreement has not been cancelled, rescinded or repudiated, and that there has been no amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interest hereby assigned and transferred to Assignee or intended so to be; and

(c) warrants that at the time of delivery of the Equipment there will be plainly, permanently and conspicuously stenciled or otherwise marked and maintained on each side of each unit of the Equipment

the following words, in letters not less than one inch in height:

FIRST NATIONAL BANK OF MINNEAPOLIS

OWNER-ASSIGNEE

(7) No delay in exercising, or failure to exercise or the partial exercise of any of the rights of the Assignee under this Agreement and Assignment shall operate as a waiver thereof. In no event shall any notice to or demand on the Seller be deemed a waiver of any obligation of the Seller to comply without notice or demand with all the terms, conditions and agreements herein contained, or a waiver of any right of the Assignee to take further action as herein provided without notice or demand, nor in any event shall any waiver or consent on the part of the Assignee be effective unless in writing, and then only with respect to the specific instance for which the same is given.

(8) It is mutually agreed that the Assignee may assign, and/or sell participations in, its rights hereunder and under the Conditional Sale Agreement, as a whole or in part, or in respect of all or any one or more of the units of Equipment covered thereby, including the right to receive any payments due or to become due to it from the Buyer under the Conditional Sale Agreement in respect of such Equipment. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

(9) Each reference herein to the Assignee, shall in every instance, except where the context otherwise requires, be deemed to include its successors and assigns, in whose favor the provisions hereof shall likewise inure; and all provisions hereof shall be binding upon the Seller and its successors and assigns.

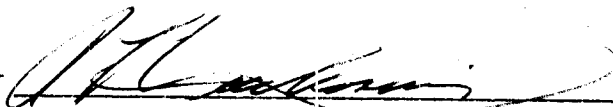
(10) The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

(11) This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Seller and the Assignee have caused this instrument to be executed in their respective names by their respective officers thereunto duly authorized, and their respective corporate seals to be affixed, duly attested, as of the day and year first above written.

THRALL CAR MANUFACTURING COMPANY


By




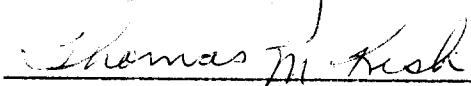
President

(CORPORATE SEAL)

ATTEST:


Secretary

Signed, sealed and delivered by
Thrall Car Manufacturing Company
in the presence of:



Attesting Witnesses

First National Bank of Minneapolis

By Alan D. Hager
Its Vice President
(CORPORATE SEAL)

ATTEST:

Samuel
Its

Signed, sealed and delivered by

in the presence of:

John P. Dea
M. S. Dea
Attesting Witnesses

STATE OF ILLINOIS)
COUNTY OF Cook) SS
)

On this 5th day of January, 19 72, before me personally appeared R. S. Buchowski, to me personally known, who, being by me duly sworn, says that he is _____ President of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Denna L. Knez
Notary Public

My Commission Expires January 7, 1973
(NOTARIAL SEAL)

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
)

On this 7 day of January, 19 72, before me personally appeared R. G. Andresen, to me personally known, who being by me duly sworn, says that he is the President of First National Bank of Minneapolis that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. G. Andresen
Notary Public
R. G. ANDRESEN
Notary Public Hennepin County, Minn.
My Commission Expires Jan. 22, 1972

(NOTARIAL SEAL)